

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
No. 5:15-CV-00171-FL

TOD SETTLE,)	
)	
Plaintiff,)	
)	
v.)	MOTION TO DISMISS
)	
EXAMINATION MANAGEMENT)	
SERVICES, INC.,)	
)	
Defendant.)	
_____)	

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Examination Management Services, Inc. ("Defendant") moves to dismiss Plaintiff's SECOND CAUSE OF ACTION alleging violations of the Fair Labor Standards Act and THIRD CAUSE OF ACTION alleging wrongful termination in violation of public policy. Based on the pleadings and the authorities set forth in the accompanying Memorandum of Law in Support of Defendant's Motion to Dismiss, Defendant submits that Plaintiff's SECOND AND THIRD CAUSES OF ACTION fail to state claims upon which relief can be granted and as such these claims must be dismissed.

In support of this Motion, Defendant relies upon the pleadings filed in this action as well as Defendant's Memorandum of Law being filed concurrently herewith.

WHEREFORE, Defendant respectfully moves that the Court dismiss Plaintiff's Complaint with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, that the Court award to Defendant its costs and attorneys' fees associated with bringing this Motion, and for such other and further relief as the Court deems just and proper.

This the 20th day of May, 2015.

/s/ Jonathan W. Yarbrough

Jonathan W. Yarbrough

N.C. State Bar No. 21316

CONSTANGY, BROOKS, SMITH

PROPHETE, LLP

84 Peachtree Road, Suite 230

Asheville, NC 28803

Telephone: (828) 277-5137

Facsimile: (828) 277-5138

jyarbrough@constangy.com

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed this **MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Craig Hensel
NC State Bar No. 40852
Hensel Law, PLLC
P O Box 39270
Greensboro, NC 27438
craig.hensel@hensellaw.com

This the 20th day of May, 2015.

/s/ Jonathan W. Yarbrough
Jonathan W. Yarbrough
N.C. State Bar No. 21316
CONSTANGY, BROOKS, SMITH
PROPHETE, LLP
84 Peachtree Road, Suite 230
Asheville, NC 28803
Telephone: (828) 277-5137
Facsimile: (828) 277-5138
jyarbrough@constangy.com